

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
TRACFONE WIRELESS, INC.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of Florida)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of New York)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the Commonwealth of Virginia)	

To the Commission:

Comments of:

THE OKLAHOMA RURAL TELEPHONE COMPANIES

**Atlas Telephone Company
Beggs Telephone Company
Bixby Telephone Company
Canadian Valley Telephone Company
Carnegie Telephone Company
Central Oklahoma Telephone Company
Cherokee Telephone Company
Chickasaw Telephone Company
Cimarron Telephone Company
Cross Telephone Company
Hinton Telephone Company
KanOkla Telephone Association, Inc.
Medicine Park Telephone Company
Oklahoma Telephone & Telegraph, Inc.
Oklahoma Western Telephone Company
Panhandle Telephone Cooperative, Inc.
Pine Telephone Company**

**Pinnacle Communications
Pioneer Telephone Cooperative, Inc.
Pottawatomie Telephone Company
Salina-Spavinaw Telephone Company
Santa Rosa Telephone Cooperative, Inc.
Shidler Telephone Company
South Central Telephone Association, Inc.
Southwest Oklahoma Telephone Company
Terral Telephone Company
Valliant Telephone Company**

September 20, 2004

The above-referenced Incumbent Oklahoma Rural Telephone Companies (collectively "Oklahoma RTCs"), by and through their attorneys, submit these initial comments in response to the Federal Communications Commission's ("Commission") Public Notice¹ requesting comments on the Petitions of AT&T Corporation² ("AT&T") and TracFone Wireless, Inc.³ ("TracFone") concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Support Mechanism.

I. THE PETITIONERS' REQUEST TO MODIFY THE COMMISSION'S RULES TO ALLOW SEPARATE DESIGNATION AS AN ETC FOR THE PROVISIONING OF LIFELINE SHOULD BE REJECTED

Both AT&T and TracFone have requested the Commission to modify its rules to allow separate Eligible Telecommunications Carrier ("ETC") certification procedures for carriers wishing only to provide Lifeline and Link-Up and to receive Low-Income Support. It is both

¹ Public Notice, Comment Sought on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Support Mechanism, CC Docket No. 96-45 and WC Docket No. 03-109; DA No. 04-2750 (Aug. 30, 2004) (Public Notice.)

² Petition of AT&T Corp. for Limited Reconsideration filed July 21, 2004 in WC Docket No. 03-109. (AT&T Petition)

³ Amendments to Petitions for Designation as an Eligible Telecommunications Carrier in the States of Florida and New York and the Commonwealth of Virginia filed August 16, 2004 in CC Docket No. 96-45. (TracFone Amended Petitions).

premature and inappropriate for the Commission to rule on the requests of AT&T and TracFone in this proceeding because of the broad implications on the universal service fund.

A. It is premature to consider separate certification procedures for Low Income and High Cost Universal Service Support

Currently, this Commission is receiving comments to the Joint Board's Recommended Decision on Universal Service⁴ ("Joint Board Recommendation") and the outcome of that proceeding will affect designation of ETCs, even those that only provide Lifeline service. For example, the Commission is requesting comments on the Joint Board's Recommendation that High Cost Universal Service Support should be limited to a single connection to the public telephone network.⁵ Although the Oklahoma RTC's strongly oppose this recommendation⁶, if this were adopted, new issues would have to be resolved such as the effect when a wireline carrier ports a customer's number to a wireless carrier for the provisioning of Lifeline service when Lifeline service is only available for a residential customer's primary access line.

It is also premature for this Commission to address this issue because the Commission has not yet established a minimum local usage requirement, nor minimum standards for ETC offerings. TracFone has stated that their proposed Lifeline offering is 250 minutes of prepaid calling time for a flat charge of \$25.00⁷. This random Lifeline offering may or may not be consistent with the goals of universal service because this Commission has not yet made a determination on the appropriate minimum standards for ETC offerings. Therefore, to accept this proposal as meeting the goals of universal service would result in unintended consequences and may lead to abuse of the universal service fund.

⁴ Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd. 4257, Rel. February 27, 2004..

⁵ *Id.* at ¶93.

⁶ See Comments of the Coalition of State Telecommunications Associations and Rural Telephone Companies, filed in CC Docket No. 96-45 on August 6, 2004.

In their Recommendation, the Joint Board notes that the Commission has not yet established a minimum local usage requirement, yet there is nothing in the Act, the FCC's rules, or orders that would limit state Commissions from prescribing some amount of local usage as a condition of ETC status.⁸ It is imperative that a minimum local usage requirement be established either by the Commission or by the states for ETCs' Lifeline offerings. In Oklahoma, in July of 2004, the Administrative Law Judge ("ALJ") made her recommendations in four wireless ETC applications pending before the Oklahoma Corporation Commission,⁹ and the Oklahoma Commission has recently issued its Order in Cause No. PUD 200300087 approving the Report of the Administrative Law Judge ("ALJ Report")(attached hereto). The ALJ made her findings in regard to Epic Touch Co.'s ("Epic Touch") wireless ETC designation based upon the federal and state criteria and public interest determinations. The ALJ considered actual wireline usage and rates in her findings setting the minimum requirements for Epic Touch's wireless universal service products which includes Lifeline/Link-Up service offerings. For Epic Touch's Lifeline offering, the ALJ found that Epic Touch should, at a minimum, include 500 minutes per month of "local usage" in its universal service products which should be available any time of the day or week, without incurring additional charges above the universal service plan cost. ALJ Report at pages 13 and 17. The ALJ's finding is based, in part, upon a study conducted by Panhandle Telephone Cooperative, Inc. ("PTCI") showing their customers use an average of approximately 400 minutes per month for outgoing local calls.¹⁰ The ALJ recommended other quality of service and customer protection requirements for Epic Touch as set forth in the attached order. Absent any federal minimum set criteria similar to the above, the Commission cannot determine

⁷ TracFone Amended Petitions at page 3.

⁸ Joint Board Recommendation at ¶35.

⁹ Cause Nos. PUD 200300087; PUD 200300195; PUD 200300239 and PUD 200300690.

¹⁰ Epic Touch requested ETC designation within the exchanges of PTCI.

whether TracFone's Lifeline product is consistent with, and furthers the goals of universal service. Therefore, the Oklahoma RTC's contend that it is premature to consider TracFone's request absent any minimum standards for ETC designation.

B. The Commission should refrain from considering separate certification procedures for Low Income and High Cost Universal Service Support at this time because it is unnecessary and the result would have unintended consequences

AT&T claims that most states require competitive local exchange carriers ("CLECs") to provide Lifeline Service, thus necessitating the filing for ETC status.¹¹ AT&T then lists three states; Minnesota, Pennsylvania and Wisconsin, that impose this requirement.¹² It appears that AT&T has filed their Petition based upon only three states' regulations for certification as a CLEC. Rather than request relief at the federal level, the proper venue to address AT&T's concern is at the state level. In Oklahoma, the Oklahoma Corporation Commission's Rules require only ETCs to offer Lifeline and Link-Up services; thereby giving the competitor the option to become certified as an ETC, and not interfering with the entry to competition.¹³ The Oklahoma RTCs believe it is improper to have the federal ETC certification rules changed based upon one carrier's certification problems they are having with a few states.

AT&T further claims that many states impose onerous conditions on ETCs that should not be a prerequisite for eligibility for Low Income Support, however, they do not give any specific examples to support their claims.¹⁴ AT&T maintains that the state's denial of Low Income Support for non-ETC competitive entrants, while granting support to the incumbents by virtue of their default ETC designation is not competitively neutral, and denies customers

¹¹ AT&T Petition at page 3.

¹² *Id.* at 6.

¹³ OAC 165:55-13-14 and OAC 165:55-13-14.1

¹⁴ AT&T Petition at page 4.

choices in providers.¹⁵ AT&T could not be further from the point because the incumbent LEC, with whom they choose to compete, is subject to the same so called "onerous conditions." The Commission should not be misled by this statement. It is the competitor's choice whether to enter a market, and this choice includes whether to be subject to the same terms and conditions as the other market participants so all are on a level playing field.

C. Issues which will have broad sweeping effects should be considered in a generic docket

The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. While the Low-Income Program does reimburse ETCs for the provisioning of Lifeline and Link-Up services in both urban and rural high cost areas, it cannot be said that Low Income Support and High Cost Support are so distinctly separate that ETC designation for Low Income Support should be separate as AT&T alleges.¹⁶ As stated above, the issues being addressed in response to the Joint Board's Recommendation may very well affect ETCs that receive High Cost Support which have competitors providing Lifeline services in their exchanges. Seeing that the implications of separate ETC designation for Low Income Support and High Cost Support may have unintended consequences without consideration of all the issues, the proper forum for addressing this issue would be in a generic docket.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 1.

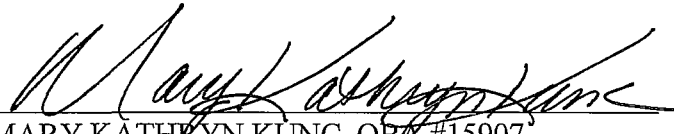
CONCLUSION

In sum, the Oklahoma RTCs request that the Commission reject the Petitioners' request to amend its rules to provide separate certification as an ETC for Low Income Support because the request is premature, will have unintended consequences, and should be addressed in a generic proceeding.

Finally, the Oklahoma RTCs look forward to participating to the fullest extent in this proceeding, including the presentation of *Ex Parte* comments to further elaborate on the issues discussed herein.

Respectfully submitted,

OKLAHOMA RURAL TELEPHONE COMPANIES

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

3D
AS
APPLICATION OF **EPIC TOUCH CO.** FOR)
CERTIFICATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER PURSUANT)
TO THE TELECOMMUNICATIONS ACT OF 1996)

CAUSE NO. PUD 200300087

ORDER NO. **494933**

**FINAL ORDER ADOPTING THE REPORT
OF THE ADMINISTRATIVE LAW JUDGE**

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration the June 30, 2004, Report of the Administrative Law Judge.

Epic Touch Co. ("Epic Touch") did not appeal the Report of the Administrative Law Judge and on August 27, 2004, Epic Touch filed a "Notice of Acceptance of Conditions for ETC Designation."

The Commission, having considered the Report of the Administrative Law Judge, attached hereto as Exhibit A, and made a part hereof, and the Notice of Acceptance, attached hereto as Exhibit B, and made a part hereof, finds that the Report of the Administrative Law Judge shall be adopted, designating Epic Touch as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving federal universal service support, with the following conditions stated in the Report:

1. If Epic Touch determines that it cannot provide service within its designated service area, Epic Touch agrees to extend its network to serve new customers upon a bona fide reasonable request. Epic Touch shall have 90 days from the date of the request to provide service or seek a waiver of such requirement from the Commission. Upon notice and hearing, the Commission shall determine if such waiver shall be granted. Upon the filing of an Application for Waiver, Epic Touch shall provide a copy of the Application filed with the Commission to Panhandle.

2. Epic Touch shall furnish the Director of the Public Utility Division copies of its universal service offerings for which Epic Touch seeks federal universal service support, within 180 days of the Commission Order granting Epic Touch ETC status, or at least 30 days prior to commencing to provide the supported services, whichever shall occur first. Failure to submit the required tariffs within 180 days of ETC designation may result in revocation of the ETC designation for Epic Touch, after notice and hearing.

3. Epic Touch shall agree to be bound by the requirements of OAC 165:55-23-1 *et. seq.* with regard to all of its product offerings for which it seeks funding from the federal universal service fund: not just for its Lifeline and Link Up services.

4. Epic Touch shall include a minimum of 500 minutes per month of "local usage" within its universal service product. The local usage minutes should be available at any time of the day or week, without incurring additional charges above the basic universal service plan cost.

5. Epic Touch shall agree to accept carrier of last resort responsibility within the service area for which it is granted ETC designation.

ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Report of the Administrative Law Judge attached hereto is hereby approved.

IT IS FURTHER ORDERED that the above findings are hereby the Order of the Commission.

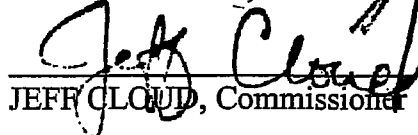
IT IS FURTHER ORDERED that because Epic Touch has filed the attached Notice of Acceptance, Epic Touch is hereby designated an ETC within the service territory of Panhandle Telephone Cooperative, for the purpose of receiving federal universal service support.

OKLAHOMA CORPORATION COMMISSION

DENISE A. BODE, Chairman



BOB ANTHONY, Vice Chairman



JEFF CLOUD, Commissioner

DONE AND PERFORMED THIS 15 DAY OF SEPTEMBER, 2004, BY ORDER OF THE COMMISSION.


PEGGY MITCHELL, Secretary

FILED
JUN 30 2004

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA
CAUSE NO. PUD 200300087

APPLICATION OF EPIC TOUCH CO. FOR)
CERTIFICATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
PURSUANT TO THE TELECOMMUNICATIONS)
ACT OF 1996)

Report of the Administrative Law Judge

Procedural History

The Application in this Cause was filed February 14, 2003, wherein Epic Touch Co. Inc., a provider of wireless telecommunications service, requested designation as an Eligible Telecommunications Carrier ("ETC") within the service territory of Panhandle Telephone Cooperative. On March 31, 2003, Epic Touch filed an Amended Application for Designation as an Eligible Telecommunications Carrier. Order No. 475536 was issued May 7, 2003, which established a procedural schedule in this Cause. A protective order was issued June 6, 2003, by Order No. 476652. A revised procedural schedule was adopted June 9, 2003, by Order No. 476724. The hearing on the merits was heard by the undersigned Administrative Law Judge on July 17, 2003 and taken under advisement. Epic Touch filed a pleading entitled "Supplement to Application" on January 15, 2004, which indicates Epic Touch has obtained authority to provide local exchange service in Panhandle Telephone Cooperative's service areas located in the states of New Mexico and Texas.

Summary of Testimony

Dr. Edward O. Price, III, provided direct and surrebuttal testimony on behalf of Epic Touch. Dr. Price testified that he is an Associate Professor of Economics at Oklahoma State University, and that he has been on the faculty for approximately 24 years. He has authored and co-authored several textbooks and research papers, and he specializes in microeconomic theory, applied microeconomics, industrial organization, public economics, and the history of economic thought. Dr. Price was qualified as an economics expert to testify on behalf of Epic Touch.

In his direct testimony, Dr. Price outlined the nine (9) services that a carrier must provide its USF customers in order to be designated an eligible telecommunications carrier ("ETC") for purposes of receiving federal universal service support. He further testified that more than one carrier may be designated an ETC for a particular market if it is in the public interest. Dr. Price stated that granting Epic Touch's ETC application would be in the public interest because it would bring the benefits of competition to consumers in Panhandle Telephone Cooperative, Inc.'s ("PTCI") service area. These

benefits include an alternative choice for telecommunications services, improved pricing and quality of service, better customer service, and sooner availability of innovative new features for consumers.

In his surrebuttal testimony, Dr. Price further explained that the entry of Epic Touch into PTCI's service area will exert competitive pressures on PTCI to innovate and change its operations in response to competition, which will ultimately benefit the consumer. Dr. Price testified that the receipt of federal USF support based on PTCI's high-cost support levels creates an incentive for carriers like Epic Touch to enter the market and make further capital investments to capture additional market share. This, in turn, will bring about competition in high-cost areas and create an incentive for PTCI to operate more efficiently and reduce its costs. Moreover, Dr. Price testified that PTCI's USF disaggregation plan, which divided each of its services areas into two separate zones for purposes of federal high-cost USF support, gives competitors an incentive to vigorously build networks throughout PTCI's service area and to compete in high-cost areas because they will receive more USF support for customers in those areas.

Dr. Price emphasized that the loss of customers by PTCI to Epic Touch will have a negligible impact on PTCI's receipt of federal high-cost USF support because the receipt of such support by PTCI is based on its embedded costs distributed over the number of lines served. In addition, the federal universal service fund will not be adversely impacted by designating Epic Touch as an ETC because the additional draw by Epic Touch is insignificant when compared to the overall size of the fund. Furthermore, because Epic Touch's receipt of federal high-cost USF support is directly tied to the amount received by PTCI, Dr. Price stated that PTCI will have an incentive to reduce its costs to free up USF funds to compete with Epic Touch. Dr. Price opined that there may be some risk that inefficient telephone service providers will be unable to compete in the face of new competition; however, the role of the federal universal service fund is to benefit consumers, not providers. Dr. Price further opined that if PTCI is left in its current position whereby it has no competition from other ETCs and is always guaranteed the receipt of the same total USF funds, PTCI would have no incentive to be efficient and improve services to its subscribers, and PTCI would actually have an incentive to increase its costs to maximize its receipt of federal high-cost USF support.

Dr. Price concluded by testifying that the benefits to the public and consumers from ETC competition in PTCI's service area will benefit the public interest by creating incentives for PTCI and its competitors to operate more efficiently, provide innovative packages of services, and lower prices to consumers. He stated that the public costs as a result of designating Epic Touch an ETC will be more than offset by overall long term reductions in costs and service improvements by both Epic Touch and PTCI, and the public interest will be served because the benefits of competition will ultimately be enjoyed by all subscribers in PTCI's service area.

Trenton D. Boaldin provided direct and surrebuttal testimony on behalf of Epic Touch Co. ("Epic Touch") in support of Epic Touch's application for designation as an Eligible Telecommunications Carrier ("ETC"). Mr. Boaldin testified that he has been President of Epic Touch since March 2002, was the Vice President of Epic Touch prior to that, and has worked full time with Epic Touch since 1983, the same year that he received his Bachelors Degree in Electronic Engineering Technology. According to his testimony, Mr. Boaldin's current responsibilities are to lead operations, marketing, information technology services, telephone services, cable television services, wireless services, and retail operations. He also has primary responsibility for business case analysis and identifying new business opportunities.

In his direct testimony, Mr. Boaldin described Epic Touch as a small rural telecommunications service provider with its headquarters in Elkhart, Kansas, and current operations in Kansas and Oklahoma. He testified that Epic Touch provides a wide range of services, including local and long distance telephone service via its wireless operations, cable television, and high speed Internet access. Mr. Boaldin also testified to Epic Touch's technical capabilities which include a highly capable team experienced in telecommunications, engineering, and information technology. He further testified that Epic Touch strives to bring the latest in telecommunications technology to its customers, including capabilities not available to many other rural customers around the country. Mr. Boaldin also testified that Epic Touch has the resources and technical abilities to operate as an ETC in Panhandle Telephone Cooperatives, Inc.'s ("Panhandle" service area.

Mr. Boaldin listed the nine services that a carrier must provide its USF customers in order to be designated an ETC. He further testified that Epic Touch will be capable of and is committed to providing these nine required services throughout Panhandle's entire study area as an ETC. According to Mr. Boaldin, Epic Touch will offer universal service, as permitted by the Federal Communications Commission's ("FCC") rules, through a combination of its own facilities and the resale of Panhandle's service, but will only receive universal service funds ("USF") for those customers it serves using its own facilities. Mr. Boaldin stated that Epic Touch will advertise its services throughout the Panhandle service area by the same methods it presently advertises its services, which include radio, television, and print advertising. Mr. Boaldin also testified that Epic Touch currently provides wireless telecommunications services to its customers on a common carrier basis.

In his direct testimony Mr. Boaldin testified that Epic Touch is not seeking ETC designation for purposes of obtaining support from the Oklahoma Universal Service Fund or the Oklahoma Lifeline Fund, and is only seeking federal USF support. Mr. Boaldin testified that Epic Touch intends to file a tariff containing its federal Lifeline and USF offerings. He testified that Epic Touch does not require deposits from its customers, but does have payment and disconnection rules. Mr. Boaldin also stated that if designated an ETC, Epic Touch would consent to the Commission's oversight concerning its USF-supported offerings. Mr. Boaldin further testified that granting Epic Touch's ETC application will have no adverse impact on universal service.

In both his direct testimony and surrebuttal testimony, Mr. Boaldin states that designating Epic Touch an ETC is in the public interest. He also pointed out in his surrebuttal testimony that this is the same conclusion reached by the Commission's staff, because designating Epic Touch an ETC will stimulate competition, provide consumers with a choice between providers of universal service, provide consumers with a variety of services and functions usually not available to landline subscribers, and expand the mobility and toll-free calling areas of consumers. In his surrebuttal testimony Mr. Boaldin affirmed that Epic Touch meets the requirements to be designated an ETC pursuant to the Telecommunications Act of 1934, as amended.

Mr. Boaldin also responded to specific issues raised by the Commission's staff and Mr. Rozell in their testimonies, such as whether Epic Touch will provide lifeline service. Mr. Boaldin clarified the difference between lifeline service and universal service: lifeline service is a minimal telephone service only made available to low income subscribers, whereas universal service provides more advanced features and options and is available to all subscribers regardless of income level. He then testified that Epic Touch will also provide lifeline service, that the service will be of a quality equally as high as universal service, and that revisions will be made to Epic Touch's tariff to reflect its offering of lifeline service.

Mr. Boaldin testified that the FCC's review of ETC and universal service issues is not an impediment to this Commission's consideration of Epic Touch's ETC designation. Mr. Boaldin pointed out that the FCC proceedings are in the early stages and will be concluded at some indefinite future time and that, furthermore, a number of states have granted ETC status to wireless companies since the FCC proceedings were initiated earlier this year.

Also in response to Mr. Rozell's testimony, Mr. Boaldin reached the following conclusions in his surrebuttal testimony: although it may be more efficient to establish wireless networks, it is not necessarily cheaper in all situations; Epic Touch continues to improve the quality and reliability of its network and any universal service funds it receives will go towards such improvements; Epic Touch does not have plans to give away free telephones so as to receive additional USF support; in order to receive funding, Epic Touch will first invest in building its network and provide services to its customers; due to the disaggregation plan, Epic Touch will not have a cost advantage if it does not immediately build facilities in all high cost areas; Epic Touch will be able to identify the cost zone for each billing address; in the aggregate, administrative costs can be reduced if fewer customers are served; Epic Touch, like other OPASTCO members, does not agree with the opinions reached in OPASTCO white papers; Epic Touch will obtain all necessary regulatory approvals from other states which are included in the Panhandle study area; and, a study area waiver from the FCC is not necessary for designating Epic Touch an ETC.

Robert Rozell testified on behalf of PTCL in this cause. He stated PTCL's position is that Epic Touch and any carrier requesting ETC status must meet all of the

requirements set forth in the law, including meeting the public interest test if the carrier requests ETC designation in a rural telephone company's service area. Based upon the Application and Testimony filed by Epic Touch in this case, PTCI does not believe that Epic Touch has met its burden of proof to be designated as an ETC. Further, PTCI does not believe the grant of additional ETC's in rural study areas is in the public interest whether it is for the federal funds or for the various state funds as long as the new designated ETC receives funding at the Incumbent's cost level, as the current rules provide. Since the new entrant most likely would overbuild only the low cost areas and the incumbent's costs include the difficult to serve and higher cost areas, it is inevitable that the funds the wireless competitor will receive will be in excess of their costs. The Universal Service Funds have historically been designed to make sure that all Americans have the opportunity to access affordable high quality telecommunications services at reasonable prices and to ensure the regulated companies have the ability to recover their investments in the network to provide those services. The use of quasi-public funds to encourage a perversely imbalanced "competition" in areas that cannot support a single provider, from the available customer revenue, cannot be in the public interest. This is especially true when the new competitor is a wireless provider who will be receiving USF funds well in excess of its costs to provide the service, and will likely cause a further imbalance in the extremely competitive wireless market in the area. Further, to fund a competitor in an area of an ILEC that has a history of providing high quality services at reasonable prices, provides no additional consumer or public benefit. The goal should be to ensure the high cost customer is served well at a reasonable cost to the public. PTCI has a history of providing high quality basic services and advanced services to the area as soon as it is economically practical to do so, and almost always ahead of the rural RBOC exchanges. Epic can offer nothing more than that since they are similarly not able to influence equipment manufacturers to invent new products or services. The only real argument Epic offers is that competition is self justifying and that they bring wireless services, packages and benefits to the customer. It is interesting to note that virtually all of the specific benefits Epic identified in response to PTCI's Interrogatories are currently offered by one or more competitors in the wireless marketplace today, including PTSI, without support, and many of them are not currently offered by Epic Touch. Despite Epic's desire to have the Commission believe otherwise, there is a highly competitive market among telecommunications service providers in Panhandle's service territory and the cellular nationwide one rate plans continue to cause declines in access minutes and even access lines for PTCI. Once again, all of the benefits and supported services are being provided today without windfall "support" revenues to one or more competitors. Mr. Rozell reminded the Commission that PTCI is only recovering a portion of its regulated cost. It also makes little financial or economic sense to provide a subsidy to a commercial company that is a competitor to a Cooperative, who is only allowed to recover its costs. Any margins PTCI has on the services are allocated back to the patrons who generated the margins and will eventually be refunded when the company is in a financial position to do so.

Mr. Rozell further testified that PTCI has concerns that funding in excess of costs will lead to irrational pricing and marketing decisions on the part of the carriers which are borne by the public at large. In some cases, it leads directly to predatory pricing by

the zero cost carrier. In other cases, the excess charges are allowed to flow to the stockholders, as previously stated. Whichever result happens, it endangers the overall support system that allows the most remote of users to obtain telephone services. Those customers in remote locations are usually left out in a competitive price conscious decision process. It would be irrational to do otherwise. One company cannot afford to spend \$50,000 to serve ten customers in a remote area for a support of \$250 per month when they can spend the same \$50,000 and serve 200 customers elsewhere in the area. When there is the opportunity to make irrational pricing and marketing decisions because of the availability of funding from a source other than the market, Universal Service considerations are thrown out the window; just as they were when the markets were first established and AT&T chose not to serve customers located in high cost areas.

Mr. Rozell expressed concerns about granting ETC status to Epic Touch in particular, if the Commission finds it is in the public interest to grant a second ETC designation within the territory of Panhandle. He indicated his opinion that Epic Touch has not deployed a reliable network. They do not have a filed Lifeline product. Epic Touch does not really know how they are going to handle disaggregation reporting.

Mr. Rozell recommended the Commission delay this issue until the Joint Board and the FCC complete their review of the current rules. That would prevent customer dislocation from non-economic plans offered under these rules. Barring that, there is a very competitive wireless marketplace in the Panhandle today that would become decidedly uncompetitive should only one wireless carrier receive ETC designation and thus be the only wireless carrier to receive USF funding in excess of its cost and the remaining carriers be precluded from receiving the funding for any length of time. The benefits of wireless competition are as great or greater than any benefits Epic Touch has identified in their application. It was the opinion of Mr. Rozell that to maintain competitive neutrality among wireless carriers, all carriers should become eligible telecommunications carriers at their request and willingness to agree to the same terms and conditions, or none should receive the designation.

Barbara Mallett testified on behalf of the Public Utility Division Staff ("Staff"). She stated that Staff recommends the Commission grant the relief Epic Touch requests in this Cause, which is to be designated as an ETC for the purpose of receiving federal universal support funds, within its certificated territory located in the exchanges of Panhandle Telephone Cooperative. Ms. Mallett stated that those exchanges are located in Cimarron, Texas and Beaver counties in the Oklahoma panhandle and in western Harper County.

In Staff's opinion, Epic Touch meets the requirements for designation as an ETC because (1) Epic Touch is a common carrier; (2) Epic Touch has a service area established by the Oklahoma Corporation Commission because Epic Touch was granted a certificate of convenience and necessity to provide competitive local exchange service in all of the exchanges served by PTSI, by Order No. 464364 issued June 11, 2002, in Cause No. PUD 200200001; (3) Epic Touch states that it provides or

will be capable of providing all of the required supported services throughout its designated service area before it receives funding from the Federal Universal Service Fund; (4) Epic Touch does not base its request for designation as an ETC solely on resold services - Epic Touch will provide local exchange service through a combination of the resold services of PTCI and its own CMRS facilities pursuant to a license from the FCC; (5) Epic Touch has committed to begin advertising its Universal Service product and the associated charges in media of general distribution throughout its service area, within 60 days of OCC designation as an ETC. Epic Touch also committed to submitting a copy of its advertising for those offerings to the Director of the Public Utility Division for review and approval prior to seeking any universal service funding; and (6) Staff concurs with Epic Touch that the designation of Epic Touch as an ETC is in the public interest, in part because Epic Touch is willing to submit to Oklahoma Commission oversight and authority in areas of Lifeline rates and terms and conditions, customer service and quality of service.

The Commission granted contingent ETC status to GCC License Corporation in Cause No. PUD 980000470 by Order No. 450765, dated April 11, 2001. In that order, the Commission stated that the wireless carrier was designated an ETC, contingent upon meeting all federal requirements prior to an application for funding from either the USF or the OUSF. It was Ms. Mallett's opinion that failure to designate Epic Touch as an ETC would be inconsistent with the Commission's Order regarding ETC status for GCC License.

Ms. Mallett further testified that Epic Touch should be required to provide Lifeline service in order to receive designation as an ETC. She explained that Lifeline service is the only local exchange service available to many eligible low-income consumers. If Lifeline service is not provided by Epic Touch, designation of Epic Touch as an ETC could result in the subsidization of Epic Touch's other services and facilities build-out from the federal Universal Service Fund, without giving the benefit of new features and choices to the low income customers within Panhandle's area. Staff does not believe that subsidization without quality provision of local service is in the public interest.

It was further the testimony of Ms. Mallett that Staff is not recommending that Epic Touch be authorized to receive funding as an ETC from the Oklahoma Universal Service Fund, because Epic Touch would need to meet additional requirements set forth in OAC 165:59 before funding can be obtained from the Oklahoma Universal Service Fund.

General Background

Epic Touch seeks designation as ETC in order to obtain federal universal support mechanisms for providing phone service within the certificated territory of Panhandle Telephone Cooperative. Section 254(e) of the Telecommunications Act of 1996 ("the Act") provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."

The requirements for designation of an ETC are identified in section 214 (e)(1) of the Act.¹

First, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area.² The ETC must offer such services either using its own facilities or a combination of its own facilities and resale of another carrier's services.³ The services that are supported by the federal universal service support mechanisms are defined as: (1) voice grade access to the public switched network;⁴ (2) local usage;⁵ (3) Dual Tone Multi-frequency (DTMF) signaling or its functional equivalent;⁶ (4) single-party service or its functional equivalent;⁷ (5) access to emergency services including 911 and enhanced 911;⁸ (6) access to operator services;⁹ (7) access to interexchange services;¹⁰ (8) access to directory assistance;¹¹ and (9) toll limitation for qualifying low-income customers.¹²

¹ The analysis of section 47 U.S.C. § 214 (e)(1) is taken from the Joint Board Recommended Decision issued February 27, 2004 in CC Docket No. 96-45 at paragraph 19.

² 47 U.S.C. § 214 (e)(1)(A).

³ *Id.* An entity that offers the supported services exclusively through resale shall not be designated as an ETC. See 47 C.F.R. § 54.201(i).

⁴ "Voice grade access" is defined as a "functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call."

⁵ "local usage" means an "amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 C.F.R. § 54.101(a)(2).

⁶ "Dual tone multi-frequency" (DTMF) is defined as a "method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time." 47 C.F.R. 54.101(a)(3).

⁷ "Single-party service" is defined as "telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission." 47 C.F.R. § 54.101 (a)(4).

⁸ "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. "911" is defined as a "service that permits a telecommunications user, by dialing the three-digit code "911," to call emergency services through a Public Service Access Point (PSAP) operated by the local government." "Enhanced 911" is defined as "911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party." "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. 47 C.F.R. § 54.101(a)(5).

⁹ "Access to operator services" is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." 47 C.F.R. § 54.101(a)(6).

¹⁰ "Access to interexchange service" is defined as the "use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network." 47 C.F.R. 54.101(a)(7).

¹¹ "Access to directory assistance" is defined as "access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings." 47 C.F.R. 54.101(a)(8).

¹² "Toll limitation" means either toll blocking or toll control for ETCs that are incapable of providing both services. For ETCs that are capable of providing both services, "toll limitation" means both toll blocking

Second, throughout the service area for which designation is received, the ETC must advertise the supported services and the charges therefore using media of general distribution.¹³ Pursuant to section 214(e)(1)(B), an ETC is required to advertise the availability and prices charged for the services that are supported by federal universal service support.¹⁴ An ETC must also advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services.¹⁵

Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC).¹⁶

Section 214(e)(2) of the Act gives state commissions the primary responsibility for evaluating requests for an ETC designation. Under section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission **may**, in the case of an area served by a rural telephone company, and **shall**, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1). Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission **shall find that the designation is in the public interest.**" (*emphasis added*)

and toll control. 47 C.F.R. 54.101(a)(9) and 54.000(d). "Toll blocking" is a service provided by carriers that allows consumers to elect not to allow the completion of outgoing toll calls from their telecommunications channel. 47 C.F.R. § 54.400(b). "Toll control" is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle. 47 C.F.R. § 54.400(c).

¹³ 47 U.S.C. § 214(e)(1)(B).

¹⁴ *Id.*

¹⁵ 47 C.F.R. §§ 54.405(b) and 54.411(d). Lifeline is a program that provides discounts to consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409. Link Up helps consumers with telephone installation costs. See 47 C.F.R. §§ 54.411-54.415. In its *Twelfth Report and Order*, the Commission created a fourth tier (\$25.00 per month) of federal Lifeline support and established additional Link-Up support (\$70.00 per consumer) which is available to ETCs serving qualifying low-income individuals living on tribal lands.....

¹⁶ 47 U.S.C. § 214(e)(1). The "service area" is the geographic area established by the state commission for the purposes of determining universal service support obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the case of an area served by a rural carrier, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Findings of Fact and Conclusions of Law

Epic Touch filed an Amended Application for Designation as an Eligible Telecommunications Carrier ("Amended Application") on March 31, 2003. The Amended Application states that Epic Touch is only seeking ETC status for the purposes of federal Universal Service Fund support. Epic Touch is not seeking ETC status with regard to the Oklahoma Universal Service Fund ("OUSF") or the Oklahoma Lifeline Fund ("OLF").

Epic Touch and Staff argue that the Commission should designate Epic Touch as an ETC, because the Commission previously granted ETC status to GCC License, subject to its compliance with certain specified conditions. Epic Touch has voluntarily agreed to comply with the majority of the conditions that were imposed upon GCC License and argues that some of the conditions placed upon GCC License should not be placed upon Epic Touch, because Epic Touch does not plan to seek funding from the Oklahoma Universal Service Fund. Specifically, Epic Touch has not agreed to accept "Carrier of Last Resort" responsibility throughout the study area of Panhandle, because Epic Touch indicates that in geographic areas where Epic Touch does not yet provide wireless service, Epic Touch will be offering traditional wireline local exchange service to its customers on a resale basis.¹⁷ In other words, Epic Touch is not volunteering to build out its facilities within a reasonable time, to enable it to serve customers that do not currently have access to wireline service.

Epic Touch further argues that designation of Epic Touch as an ETC will benefit the public by creating incentives for Panhandle and its competitors to operate more efficiently, provide innovative packages of services and lower prices to consumers. Epic Touch argues that designation of Epic Touch as an ETC will cause the benefits of competition to be enjoyed by all customers within Panhandle's service area.

Panhandle Telephone Cooperative argues that it is already providing high quality service to the customers within its territory at reasonable prices and provides advanced services as soon as it is economically practical to do so and usually before the advanced services are provided in the rural exchanges of the Regional Bell Operating Companies. Panhandle argues that the wireless marketplace is very competitive already, without support from the federal universal support fund and that to grant ETC status to one wireless carrier within Panhandle's territory will have give that wireless carrier an economic advantage over other wireless carriers serving the same area. Panhandle therefore requests that if the Commission grants ETC status to Epic Touch, the Commission grant ETC status to any wireless carrier that requests ETC designation and demonstrates a willingness to agree to the same terms and conditions placed upon Epic Touch.

In determining whether to grant ETC status to Epic Touch, the Commission must first determine whether the carrier seeking ETC status meets the requirements for ETC

¹⁷ See Amended Application at page 11.

designation. Secondly, the Commission must determine whether it is in the public interest to grant ETC status to a carrier other than the incumbent rural carrier.

In 2001, the Commission designated GCC Wireless ("GCC") as an ETC subject to its compliance with certain specified conditions. GCC appealed the Commission's designation, arguing that the state lacked jurisdiction to regulate the entry of a provider of Commercial Mobile Radio Service ("CMRS") into Oklahoma or the rates charged for any CMRS. The Court of Civil Appeals for the State of Oklahoma, Division IV, upheld the Commission in an unpublished decision filed November 12, 2002. The Court of Civil Appeals stated: "We hold that the conditions under review do not 'regulate the entry of or the rates charged' by GCC for its general commercial mobile radio services, but instead, are permissible 'terms and conditions' for GCC to undertake the provision of universal, subsidized basic local telephone services."¹⁸

Epic Touch and Staff argued in this Cause that Epic Touch should be designated an ETC because it meets or has agreed to meet the same conditions placed upon GCC, with the exception of carrier of last resort obligation. In 2001, when the Commission approved ETC designation for GCC, the Commission stated that designation of GCC as an ETC would provide greater customer choice and the benefits of competition to consumers within these rural study areas by adding an additional universal service provider in such areas. Such choice and competition benefits will bring new telecommunications services and a more rapid deployment of new technologies in rural areas of the State and should lead to better service for Oklahoma's rural customers.¹⁹

Since 2001, there have been a number of clarifications in orders issued by the FCC regarding the Universal Service Fund and the designation of a CMRS provider as an ETC in both rural and non-rural areas. In addition, the Commission adopted new rules, which will become effective July 15, 2004, regarding the requirements to be met by a CMRS provider that is granted ETC status.²⁰ In light of the new rules, recent FCC orders and the ever growing size of the federal universal service fund, the ALJ believes the Commission should look closely at the criteria utilized for determining whether it is in the "public interest" to grant ETC designation to an additional telecommunications provider in the territory of Panhandle.

Applying the requirements of 47 U.S.C. § 214(e)(1) to Epic Touch, the ALJ finds:

1. Epic Touch is a common carrier. Epic Touch states that it will provide the services supported by the federal universal service mechanisms throughout the designated service area.

¹⁸ *GCC License Corporation vs. Oklahoma Corporation Commission and the State of Oklahoma*, Court of Civil Appeals of the State of Oklahoma, Division IV, Case No. 96,260. Order issued November 12, 2002.

¹⁹ Order No. 450765 issued April 11, 2001 in Cause No. PUD 980000470 at paragraph 19.

²⁰ OAC 165:55-23-1 *et seq.* establish service standards for Wireless Eligible Telecommunications Carriers. These standards are applicable only to the provision of Lifeline Service and Link-up by designated wireless ETCs.

2. The Commission should evaluate whether Epic Touch will provide the supported services, on a service by service basis. For those services the Commission determines Epic Touch either provides or will provide, the ALJ finds provision of the services will be made by Epic Touch either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by the wireline carrier).

3. Epic Touch states it will advertise the availability of the supported services and the charges therefore, using the same type of advertising media it utilizes for its current wireless services.

4. The ETC service area for Epic Touch would be the study area of Panhandle. Epic Touch is certificated to provide competitive local exchange service within the territory of Panhandle.

The FCC, issued a decision January 22, 2004, which should be considered by the Oklahoma Commission in determining whether to grant ETC status to Epic Touch. In the case of *In the matter of Federal-State Joint Board on Universal Service Virginia Cellular, L.L.C. Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, the FCC stated:

While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. ***The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission.*** We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that **these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.**²¹ (*emphasis added*)

²¹ FCC decision in CC Docket No. 96-45 released January 22, 2004, at paragraph number 4.

The 9 services that are supported by the federal universal support mechanisms are identified in detail above, in the portion of this ALJ report identified as "General Background." The ALJ finds that the Commission should establish a guideline for "local usage" and require Epic Touch to meet the local usage guideline as a condition of being designated an ETC. The FCC has not established a specific number of local minutes that must be included in a universal service product and Epic Touch has not committed to providing a specific minimum number of "local usage" minutes in its universal service product. The ALJ finds that Epic Touch should be required to include 500 minutes per month of "local usage" in its universal service product. The local usage minutes should be available at any time of the day or week, without incurring additional charges above the basic universal service plan cost. One of the main complaints at the Commission in recent years has been the high cost of telephone service between customers located within a few miles of each other in rural areas. Although Epic Touch may offer larger toll free calling areas than those provided by the wireline carrier, if the customer doesn't have access to sufficient minutes of local usage within the standard price of their universal service product, the benefits of the universal service product provided by Epic Touch will quickly be offset by additional airtime charges for local calls or the use of all the "free long distance" for calls made within the current local calling scope of the customer.

In granting the petition of Virginia Cellular for designation as an ETC, the FCC found that it was sufficient that Virginia Cellular demonstrated that it would offer minimum local usage as part of its universal service offering. The FCC found that although the Commission did not set a minimum local usage requirement in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services. Virginia Cellular stated it would comply with any and all minimum local usage requirements adopted by the FCC. It also indicated it would meet the local usage requirements by including a variety of local usage plans as part of a universal service offering. In addition, Virginia Cellular stated that its current rate plans include access to the local exchange network, and that many plans include a large volume of minutes. Therefore, the FCC found that Virginia Cellular's commitment to provide local usage was sufficient.²²

In CC Docket No. 96-45, the Federal-State Joint Board on Universal Service ("Joint Board") issued a recommended decision on February 27, 2004 ("Joint Board recommendation") regarding the process for designation of eligible telecommunications carriers ("ETCs"). Although the Federal Communications Commission has not yet specifically addressed the recommendation of the Joint Board, the ALJ believes the recommended decision of the Joint Board offers guidance for determining whether it is in the "public interest" to designate an ETC other than the ILEC in a rural area.

The Joint Board Recommendation noted that although the FCC has not yet established a minimum local usage requirement, there is nothing in the Act, the FCC's

²² *Id.* at paragraph 20.

rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status. As determined by the Fifth Circuit in *TOPUC v. FCC*, 183 F.3d 393, states may establish their own eligibility requirements for ETC applicants. In determining that unlimited local usage should not be added to the list of services supported by federal universal service, the FCC found that the states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances.²³

The ALJ finds that if the FCC or Oklahoma Corporation Commission in the future establishes a different minimum number of local usage minutes, the amount established by the FCC or Oklahoma Corporation Commission should be the requirement to be met by Epic Touch, rather than the 500 minutes recommended by the ALJ.

In determining whether designation of Virginia Cellular as an ETC would serve the public interest, the FCC considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular sought designation as an ETC would outweigh any potential harms. The FCC noted that this balancing of benefits and costs is a fact-specific exercise.

"In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame."

The FCC further indicated that as part of a pending docket regarding high-cost support in competitive areas, the FCC might adopt a different framework for the public interest analysis of ETC applications.²⁴

The need to balance benefits and costs in determining whether it is in the public interest to designate an additional ETC within the territory of a rural carrier was not addressed by the Joint Board. The Joint Board Recommendation points out that

"[b]ecause an ETC must be prepared to serve all customers within a designated service area, and must be willing to be the sole ETC should other ETCs withdraw from the market, states may appropriately establish minimum qualifications focused on the carrier's ability to provide the supported services to all consumers in the designated area upon reasonable request. Guidelines encouraging a rigorous application process are appropriate because section 214(e)(2) requires that

²³ Joint Board Recommendation released February 27, 2004, at paragraph 35.

²⁴ *Id.* at paragraph 28.

designation of an additional ETC serve the public interest. Consistent with Section 254(b)(3) of the Act, we believe that a rigorous application process ensures that consumers in all regions of the nation, including rural and low-income consumers, have access to telecommunications services that are reasonably comparable to services provided in urban areas.”²⁵

The Joint Board Recommendation further urges that a specific, fact-intensive inquiry be utilized to analyze the public interest when evaluating an ETC application for a rural area. An analysis which only cites generalized benefits of competition when evaluating an ETC application is not sufficient by itself to establish public interest. Section 214 (e)(2) requires states to undertake a fact-intensive analysis to ensure that the designation of any additional ETCs will promote the goals set forth in section 254 of the Act **in the affected area.**²⁶

The ALJ finds that the criteria to be considered in determining whether designation of more than one carrier as an ETC in a rural area is “in the public interest” include:

1. Will the public receive a benefit from the designation of another carrier as an ETC in this service area (e.g. will competition lower the cost of basic local service or encourage the provisioning of advanced services?)
2. Will the goal of universal service be advanced by the designation of another carrier as an ETC in this service area? (e.g. will more customers be connected to the telecommunications network as a result of designating another ETC in this service area?)
3. Will customers who do not have telephone service from the ILEC be able to obtain telephone service as the result of the designation of the carrier as an ETC? (e.g. will the customer have the ability to get telephone service in a location not currently served by the wireline company)
4. Will there be any adverse effect upon the public by the designation of another carrier as an ETC in this service area? (e.g. will the additional cost to the federal universal service fund be sufficiently offset by the benefits realized by the public as the result of designating a second ETC within a service area?)

The ALJ finds that Epic Touch is already authorized to provide telecommunications services within the service territory of Panhandle. Designation as an ETC will enable Epic Touch to receive federal universal support for providing universal service, which may encourage Epic Touch to build out its network in order to provide service to areas that don't currently have access to high quality telecommunications services. In the absence of designation as an ETC, Epic Touch will

²⁵ Joint Board Recommended Decision issued February 27, 2004 in CC Docket No. 96-15, at paragraph 11.

²⁶ *Id.* paragraph 12.

continue to make a business decision on whether to provide service in a particular area without regard to the potential receipt of universal service support.

Based upon the entire record in this Cause and the clarifications made by the FCC and the Commission since the time of the July 17, 2003 hearing, the ALJ finds that it is not in the public interest to designate an additional ETC within the service area of Panhandle unless certain criteria are agreed to be met by the additional ETC. Panhandle provides high quality service to its customers at affordable rates. It makes advanced services available to its customers when it is economically and technically feasible to do so. Competition, in and of itself, is an insufficient reason to designate an additional ETC within the service territory of a rural carrier.

The ALJ notes that with regard to competition, an additional request for ETC designation within the service area of Panhandle was filed by Panhandle Telecommunications Systems, Inc. ("PTSI") and is under advisement by the ALJ.²⁷ If it is in the public interest to designate one additional ETC within the service area of Panhandle, it is in the public interest to designate more than one additional ETC within the service area of Panhandle, so that it is possible to have an even playing field among all the providers of local exchange service within the service area of Panhandle. Just as the Act requires the State Commission to designate more than one common carrier as an ETC for a service area served by a non rural telephone company, the ALJ finds that **once the Commission has determined it is in the public interest** to designate an additional ETC within the service territory of a rural telephone company, the Commission should find it is appropriate to designate more than one common carrier as an ETC within that rural telephone company's service area.

The ALJ finds it is there will be public benefit received by customers within the service area of Panhandle, thereby making it in the public interest to designate Epic Touch as an ETC in the service area of Panhandle, **only** if the following conditions are met:

1. If Epic Touch determines that it cannot provide service within its designated service area, Epic Touch agrees to extend its network to serve new customers upon a bona fide reasonable request. Epic Touch shall have 90 days from the date of the request to provide service or seek a waiver of such requirement from the Commission. Upon notice and hearing, the Commission shall determine if such waiver shall be granted. Upon the filing of an Application for Waiver, Epic Touch shall provide a copy of the Application filed with the Commission to Panhandle.

2. Epic Touch shall furnish the Director of the Public Utility Division copies of its universal service offerings for which Epic Touch seeks federal universal service support, within 180 days of the Commission Order granting Epic Touch ETC status, or at least 30 days prior to commencing to provide the supported services, whichever shall

²⁷ See Cause No. PUD 200300690, filed with the Oklahoma Corporation Commission on November 21, 2003.

occur first. Failure to submit the required tariffs within 180 days of ETC designation may result in revocation of the ETC designation for Epic Touch, after notice and hearing.

3. Epic Touch shall agree to be bound by the requirements of OAC 165:55-23-1 *et seq.* with regard to all of its product offerings for which it seeks funding from the federal universal service fund; not just for its Lifeline and Link Up services.

4. Epic Touch shall include a minimum of 500 minutes per month of "local usage" within its universal service product. The local usage minutes should be available at any time of the day or week, without incurring additional charges above the basic universal service plan cost.

5. Epic Touch shall agree to accept carrier of last resort responsibility within the service area for which it is granted ETC designation.

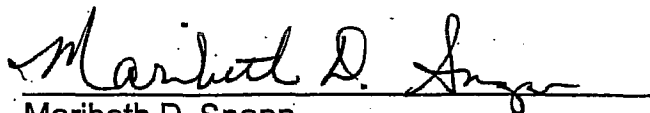
The ALJ further finds that the public interest is only met if the Commission grants ETC designation to any other wireless carrier providing service within the service area of Panhandle; provided the wireless carrier makes application for ETC status and agrees to be bound by the same requirements set forth herein for Epic Touch.

Recommendation of the Administrative Law Judge

The ALJ recommends the Commission find it is in the public interest to grant Epic Touch ETC status within the service area of Panhandle Telephone Cooperative, only if Epic Touch agrees to meet the criteria set forth above. If Epic Touch is unable or unwilling to meet the above criteria, the Commission should deny Epic Touch ETC designation, because in the absence of these criteria being met, it is not in the public interest to designate an additional ETC within the service area of Panhandle. Panhandle needs funds from the federal universal service fund in order to be able to afford to provide high quality service within its service area, due to the lack of customer density within its service area. The use of quasi-public funds to encourage "competition" in areas that cannot support a single provider from the available customer revenue, cannot be in the public interest, unless the additional ETCs are able to provide services not otherwise available from the incumbent wireline provider.

If the above criteria are agreed to by Epic Touch, the ALJ recommends the Commission designate Epic Touch as an ETC within the service area of Panhandle.

Respectfully submitted this 30th day of June, 2004,



Maribeth D. Snapp
Administrative Law Judge

AUG 27 2004

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA
COURT CLERK'S OFFICE FOR
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF EPIC TOUCH CO. FOR)
CERTIFICATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

Cause No. PUD 200300087

**NOTICE OF ACCEPTANCE
OF CONDITIONS FOR ETC DESIGNATION**

The Applicant, Epic Touch Co. ("Epic Touch") submits its Notice of Acceptance of Conditions for designation as a wireless eligible telecommunications carrier ("ETC"). In support of this Notice, Epic Touch states:

1. On February 14, 2003, Epic Touch filed its application seeking designation as an ETC within the service territory of Panhandle Telephone Cooperative.

2. On June 30, 2004, the administrative law judge ("ALJ") issued her Report and Recommendation, wherein the ALJ recommended ETC designation of Epic Touch, subject to the company's acceptance of five conditions.

3. Epic Touch did not appeal the ALJ's Report and Recommendation to the Commission.

4. Epic Touch hereby gives Notice to the Commission that it will accept the five conditions for ETC designation recommended by the ALJ and respectfully requests that the commission issue its final order designating Epic Touch as an ETC consistent with the Report and Recommendation of the ALJ.

EXHIBIT "B"

Respectfully submitted,

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ATTORNEYS FOR EPIC TOUCH CO., INC.

CERTIFICATE OF MAILING

This is to certify that on the 27th day of August, 2004, a true and correct copy of the foregoing instrument was mailed, postage prepaid, to the following:

David Dykeman
Assistant General Counsel
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